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inasmuch as a federal court cannot make such a decree, it cannot take jurisdiction of this sort of cause. Fuller, C. J., Harlan, and Peckham, JJ., *dissenting*.

In the case of contracts the *lex fori* governs procedure and remedy. *Don v. Lippman*, 5 Cl. and F. 1, 13; *Scudder v. Bank*, 91 W. S. 406. Thus it determines whether there can be attachment for debt. *De la Vega v. Vianna*, 1 B. & Ad. 284; *Hinkley v. Marean*, 3 Mason 88. On principle, the same rule should apply in case of torts. *Story, Conf. of Laws*, 9557. And the English courts, with some of those in this country, have so held, *Machad v. Fontes*, 2 Q. B. (1897) 231; *W. U. Tel. Co. v. Phillips*, 2 Tex. Civ. App. 608,616: but see *Carter v. Goode*, 50 Ark. 155. The better view places statutory torts on the same basis as those arising out of the common law. *Illinois Central R. Co. v. Ihlenberg*, 43 U. S. App. 726; *C. & E. I. R. Co. v. Rouse*, 178 Ill. 132. But the majority of the courts still emphasize the similarity of their own statutes to that sought to be enforced. *Cincinnati, Etc., R. Co. v. McMullen*, 117 Ind. 439; *Morris v. Ry. Co.*, 65 Ia. 727.

CONSTITUTIONAL LAW—CHANGE OF VENUE—BARRY V. TRUAX, 99 N. W. 769 (N. D.).—*Held*, that a clause in a state code providing for a change of venue upon application of the state's attorney does not violate the right of trial by jury, as it existed at common law.

The provisions in the various state constitutions relative to trial by jury generally declare that this right "shall remain inviolate." The common law, as announced in IV. *Blackstone* 350, provides that the jury shall be composed of "freeholders of the *visue* or neighborhood; which is interpreted to be the county where the fact is committed." A number of courts have held that the constitutional right of trial by jury includes the right of having the jurors selected from the county in which the offense is alleged to have been committed. *Buckrice v. People*, 110 Ill. 29; *People v. Powell*, 87 Cal. 348; *Kirk v. State*, 1 Cold. 344. In *State v. Potter* 16 Kan. 80, it was held that this right is one which the accused may waive or insist upon. Contrary to this, it has been held by the Michigan court that a change of venue may be granted on request of the State as well as on request of the accused. *People v. Fuhrmann*, 103 Mich. 593. So in *State v. Miller*, 15 Minn. 344, it was held that when an impartial trial cannot be held in the county where an indictment is found, the court has the power, on application of the prosecution, to change the place of trial to an adjoining county. This doctrine, which is in harmony with the decision in the principal case, is the prevailing view. *Price v. State*, 8 Gill 295; *People v. Harris*, 4 Denio (N. Y.) 150; *Commonwealth v. Davidson*, 91 Ky. 162.

CONSTITUTIONAL LAW—DISCRIMINATING STATUTE—LEGISLATIVE DISCRETION—MISSOURI, K. & T. RY. CO. V. MAY. 24 Sup. Ct. 638.—A Texas statute imposed a penalty upon railway companies alone for permitting Johnson grass to mature upon their lands. *Held*, that inasmuch as the court is "unable to say that the law may not have been justified by local conditions," this discrimination against these companies is a valid exercise of legislative discretion. Brown, White, and McKenna, JJ., *dissenting*.

M'Culloch v. Maryland, 4 Wheat. 316, is relied on to support the ruling; but that decision, in requiring that the means adopted by the legislative body should be "appropriate," "really calculated to effect the object in view," seems to place on the courts the duty of satisfying themselves of the fulfill-

ment of this condition. pp. 409, 423; see also *Fisher v. Blight*, 2 Cranch 358. Language more closely restricting the judiciary has at times been used. *Civil Rights Cases*, 109 U. S. 3, 51. But the court has hitherto justified discriminating statutes by establishing positive grounds of distinction. *Legal Tender Cases*, 12 Wall. 457; *Minneapolis, &c., Ry. Co. v. Beckwith*, 129 U. S. 26. So it has positively shown the reasonableness of classifications of taxable property. *Magoun v. Bank*, 170 U. S., 283, 294; but see *Am. S. R. Co. v. La.*, 179 U. S. 89, which is theoretically the sound rule. *Cooley, Const. Lim.* 393. In failing to require this positive justification, the court has advanced a step.

CONSTITUTIONAL LAW—HABEAS CORPUS—EXCLUSION OF CHINESE.—UNITED STATES V. SING TUCK ET AL., 24 Sup. Ct. 621.—Chinese persons claiming United States citizenship, but offering no proof, upon being refused admission to this country, obtained writs of *habeas corpus* without first making appeal to the Secretary of Commerce and Labor. *Held*, that such appeal is prerequisite to an appeal to the courts, and that due process of law is not disregarded by the Chinese regulations of the Department of Commerce and Labor. Mr. Justice Brewer and Mr. Justice Peckham, *dissenting*.

That the statutes may constitutionally make the authority of executive officers exclusive in the case of aliens is well established. *Fong Yue Ting v. U. S.*, 149 U. S. 698. The court in the principal case expressly disclaims deciding whether their decisions may be made final upon the facts of citizenship, referring to the *Japanese Immigrant Case*, 189 U. S. 86; *Fok Yung Yo v. U. S.*, 185 U. S. 296; and *Chin Bak Kan v. U. S.*, 186 U. S. 193, as the available precedents if a decision of this point should become necessary. In the district court it has been held that the question of citizenship is one which cannot be committed for final decision to executive officers. *U. S. v. Yee Mun Sang*, 93 Fed. 365. But the tendency both in the Supreme Court and in the lower courts seems to be in the other direction. That a claim of citizenship is not enough to affect the finality of the jurisdiction of a United States Commissioner was decided in *Chin Bak Kan v. U. S., supra*, but in that case the commissioner's judgment had been already affirmed by the district court. In the case of an alien, irregularity in conducting the hearing, and a refusal to hear cumulative testimony have been held not to constitute grounds for review by the courts. *In re Leong Youk Tong*, 90 Fed. 648. See also *In re Lee Ping*, 104 Fed. 678.

CONSTITUTIONAL LAW—VALIDITY OF MUNICIPAL ORDINANCES—BILL BOARDS.—BILL POSTING SIGN CO. V. ATLANTIC CITY, 58 Atl. 342 (N. J.)—*Held*, that an ordinance forbidding the construction of signs upon private property, regardless of whether such signs are a menace to the public safety, is unconstitutional, as an attempt to appropriate private property to public use without compensation.

Municipal ordinances against bill boards are generally enacted on grounds of public safety. Whether they are upheld as safety measures, *Rochester v. West*, 164 N. Y. 510, or held to be unreasonable, *Crawford v. Topeka*, 51 Kan. 756, they do not purport to prohibit upon the ground of unsightliness. It was held in *People v. Green*, 83 N. Y. Supp. 460, that a statute giving a municipality unlimited power to regulate the erection of signs upon private property is inimical to the constitutional provision. But the limitation of height of bill boards to six feet has been upheld as a proper safety measure. *Rochester*